IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 9743 of 2007(I)

PETITIONER:

JOY THOMAS,
S/O.THOMAS, AGED 37 YEARS, RESIDING AT
KARIYIL HOUSE, THATHAMPALLY, MULLACKAL, ALAPPUZHA.

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS
CHIEF SECRETARY GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
ALAPPUZHA.

3. REVENUE DIVISIONAL OFFICER,
ALAPPUZHA.

4. SPECIAL TAHSILDAR L.A.(GENERAL),
ALAPPUZHA.

BY GOVERNMENT PLEADER SRI.T.G.SUNIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE GIFT DEED NO.1086/00 OF ALAPPUZHA SRO.

EXT.P2 TRUE COPY OF THE TAX RECEIPT DATED 23.6.2005 ISSUED TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE PURCHASE CERTIFICATE DATED 28.11.77 ISSUED FROM THE LAND TRIBUNAL, ALAPPUZHA.

EXT.P4 TRUE COPY OF THE PROCEEDINGS DATED 26.11.1984 OF THE SPECIAL TAHSILDAR (LR) ALAPPUZHA.

EXT.P5 TRUE COPY OF THE SALE DEED NO.132/85 OF ALAPPUZHA SRO.

EXT.P6 TRUE COPY OF THE WILL DEED NO.89/88 OF ALAPPUZHA SRO.

EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 3.1.2003 OF THE PETITIONER.

EXT.P8 TRUE COPY OF THE NOTICE ISSUED UNDER S.9(B) OF THE LAND ACQUISITION ACT.

EXT.P9 TRUE COPY OF THE FORM 12 NOTICE DATED 19.7.2005.

EXT.P10 TRUE COPY OF THE NOTICE DATED 15.12.2006 ISSUED BY THE 3RD RESPONDENT.

EXT.P11 A TRUE COPY OF THE FORM NO.14 ISSUED TO THE PETITIONER BY THE DISTRICT SUPERINTENDENT OF SURVEY.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE.

WPC.

K.PADMANABHAN NAIR, J.

W.P.(C) No.9743 of 2007

Dated this the 28th June, 2007.

J U D G M E N T

Petitioner is the owner and is in possession over 3.84 Ares (09.4848 cents) of land comprised in Survey No.26/10/1 of Aryadu South Village (presently in Survey No.26/10-1-10 of Mullackal village), and a building situated therein, as per the gift deed No.1086/2000 of Alappuzha SRO, executed by his father. According to the petitioner, 4th respondent, Land Acquisition Officer had initiated steps for acquisition of 2.43 Ares of property from the petitioner. But on the strength of that acquisition proceedings, respondents are trying to take possession of 3.84 Ares of property, without paying any additional compensation for the remaining property.

2. The Land Acquisition Officer has filed a counter affidavit, in which, it is averred that the acquisition proceedings is only in respect of 2.43 Ares of land. In paragraph 10 of the counter affidavit, it is stated as follows:-

> "10. It is submitted that the acquisitioning authority has not proceeded to take more extent of land than 2.43 ares which was notified for acquisition. It is submitted that in the notification and the declaration of land proposed for acquisition owned by the petitioner was shown as 2.43 ares comprised in Sy.No.26/10-1-10 of Mullackal Village. "

3. The learned Senior Government Pleader appearing for the respondents has stated that the acquisitioning authority has no intention to take possession of any excess land. It is admitted that only 2.43 Ares of land is notified for acquisition. That statement is also recorded. In case, the respondents are taking possession of any land in excess of 2.43 Ares, without resorting to land acquisition proceedings, the remedy available to the petitioner is to approach the competent Civil Court for redressal of his grievance. In a proceeding under Article 226 of the Constitution of India, this Court cannot conduct a detailed enquiry as to whether petitioner's predecessor-in-interest was actually in possession of 3.84 Ares of property; whether the same was gifted to him; and whether the petitioner is having title or possession over the entire property claimed by him.

Therefore, recording the statement made by the learned Government Pleader, the writ petition is closed, without prejudice to the right of the petitioner to take re-course to other proceedings, in case of dispossession of any excess land.

K.PADMANABHAN NAIR,
JUDGE

nj.